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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

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1993

Reply To
Attn Of: HW-106

Michael Babich III
Senior Manager, Environmental Engineering
Boeing Commercial Airplane Group, Renton Facility
Post Office Box 3707 MS-6301
Seattle, Washington 98124-2207

RE: EPA/Ecology ID No. WAD 00926 2171

Dear Mr. Babich:

This letter is in response to your request for clarification of points raised in the May 18 Boeing memorandum from T. M. McCain to you concerning the RCRA definition of "facility." You raised additional aspects of the facility definition issue during meetings on November 16 and December 4, 1992 with Dave Bartus of EPA.

The enclosed file memorandum from Dave Bartus outlines EPA's and Ecology's interpretation of the definition of facility for base program permitting purposes, and its application to the Boeing Renton Part B permit application.

Should you have any questions or comments, please feel free to contact Dave Bartus (EPA) at (206) 553-2804.

Sincerely,

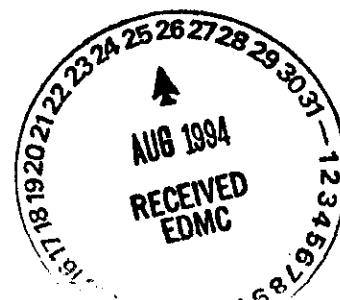
Carrie Sikorski, Chief
Environmental Protection Agency
RCRA Permits Section

Sincerely,

Gerald Lenssen, Supervisor
Department of Ecology
Hazardous Waste Permit Section

cc: Jack Boller, EPA WOO
Julie Sellick, Ecology NWRO
Barbara Thompson, Boeing

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

MEMORANDUM

JAN 28 1993

From: David Bartus, Environmental Engineer DBB
RCRA Permits Section

To: File

RE: EPA/Ecology ID No. WAD 00926 2171

This memorandum is in response to questions raised in the May 18, 1992 Boeing memorandum from T. M. McCain to L.M. Babich III concerning the RCRA definition of "facility." This issue has also been addressed in Boeing's technical memorandum of July 15, 1991 to Dave Bartus, EPA, a letter from Dave Bartus, EPA, to L.M. Babich, Boeing, of March 12, 1992, and in the second Part B application Notice of Deficiency (NOD). L.M. Babich raised additional aspects of the facility definition issue during meetings with Dave Bartus on November 16 and December 4, 1992.

Two principal questions are raised by Boeing. The first is what is the definition of facility for permitting of regulated units pursuant to 40 Code of Federal Regulations (CFR) Parts 264 and 270, and how does this definition differ from that applicable to corrective action for releases from solid waste management units pursuant to 40 CFR 264.101. The second question concerns which of these two definitions of facility are applicable to 40 CFR 264, Subparts AA and BB. As discussed below, the definition of facility for permitting purposes includes all contiguous property associated with the site, not just that portion directly associated with waste management activities. This definition is also applicable to regulations in 40 CFR 264 Subparts AA and BB. The corrective action definition of facility expands upon the permitting definition by including additional contiguous property beyond the site boundary that is under the control of the facility owner or operator.

Boeing appears to interpret the definition of facility by working backwards from the proposed definition in the Subpart S corrective action rule to the existing definition applicable to base program permitting. A more appropriate discussion is found in agency interpretations of this issue that apply directly to permitting of waste management units, rather than to corrective action. Such an interpretation is found at 47 Federal Register (FR) No. 143, 32288 (July 26, 1982), as cited in the March 12, 1992 letter from Dave Bartus, EPA, to L.M. Babich. This interpretation appeared prior to § 3004(u) or § 3004(v) of the Hazardous and Solid Waste Amendments (HSWA) to RCRA upon which the corrective action definition of facility is based. The 1982

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interpretation, therefore, is directly applicable to the issue of facility definition as applicable to permitting of waste management units.

The 1982 preamble reads:

"...When using the term "facility," EPA is referring to the broadest extent of EPA's area jurisdiction under Section 3004¹ of RCRA. In many cases, particularly for off-site facilities, this means the entire site that is under the control of the owner or operator engaged in hazardous waste management. Within the facility there will be an area where hazardous waste treatment, storage and disposal activities occur. This is the waste management area.

The waste management area is made up of one or more waste management units. The provisions in the Part 264 and 265 regulations (principally the technical standard in Subparts K-N) establish requirements that are to be implemented on a unit by unit basis. A waste management unit is a contiguous area of land on or in which waste is placed..."

This preamble language clearly indicates that the facility definition should be interpreted to include an entire site, not just that portion of the site physically associated with waste management. Furthermore, a nexus between contiguous property and hazardous waste management is established through the reference to "the owner or operator engaged in hazardous waste management." The nexus is not established through the physical location of waste management activities. That is, the "contiguous property" referred to in the 40 Code of Federal Regulations (CFR) § 260.10 facility definition need not itself be used for hazardous waste management. The contiguous property need only be contiguous to the waste management area or regulated units and be under the control of the owner or operator.

Structures, other appurtenances and improvements on the land, however, are to be associated with hazardous waste management that is included in the facility definition. Paraphrased, the § 260.10 definition should be interpreted as "Facility means all contiguous land, as well as the structures, other appurtenances and improvements on the land which are used for treating, storing, or disposing of hazardous waste..." (interpretive alterations underlined). This interpretation is fully consistent with the 1982 preamble language cited above.

¹ In this context, § 3004 of RCRA refers to only to the Resource Conservation and Recovery Act (RCRA), as opposed to RCRA as amended by HSWA. The reference specifically excludes §3004(u) and §3004(v), which were added by the HSWA amendments to RCRA.

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The 40 CFR 260.10 language also clearly indicates distinctions between a facility, a waste management area, and a waste management unit or regulated unit. In this hierarchy, a waste management area is a superset of a waste management unit, and a facility is a superset of a waste management area. By virtue of practical necessities, such as the need for setbacks between regulated units and property boundaries as required by 40 CFR § 264.176, a facility will always be larger than a regulated unit, rather than identical to a regulated unit as suggested by Boeing in its July 15 memorandum.

The 40 CFR §260.10 definition of facility is further discussed and reiterated in the July 15, 1985 Final Codification Rule (50 FR No. 135, 28702). The 1985 interpretation cites portions of the 1982 preamble quoted above, then states:

"...Accordingly, for the purposes of section 3004(a), the term 'facility' is not limited to those portions of the owner's property at which units for the management of solid or hazardous waste are located, but rather extends to all contiguous property under the owner or operator's control."

This language is clearly applicable to base program permitting, as §3004(a) of RCRA (standards applicable to owners and operators of hazardous waste TSD facilities) is explicitly referenced (as opposed to §3004(u) or (v)). Boeing's May 18, 1992 memo misconstrues this interpretation by presuming that the interpretation refers only to corrective action. Both of the regulatory citations referenced above establish the position that the definition of facility for base program permitting purposes extends to all contiguous property at the site, not just the regulated unit or waste management unit.

Once the facility definition for permitting of regulated units is understood ("base program definition"), the distinction between the base program and the HSWA corrective action definitions can be elucidated. As Boeing and EPA discussed on November 16 and December 4, the corrective action definition of facility should be thought of as expanding upon the waste management unit permitting definition. Whereas the July 26, 1982 Federal Register preamble language cited above indicates that "contiguous land" in the facility definition is limited to the "site," the corrective action definition broadens the facility definition to include all contiguous property "under the control of the owner or operator." This phrase is intended to encompass property beyond the site that may be under the owner's or operator's control.

To illustrate the distinction between the base-program and corrective action definitions of facility, consider the owner of a 100-acre parcel who leases a 20-acre sub-parcel to an independent party. The independent party then operates a

hazardous waste management facility on the 20-acre sub-parcel. The base-program facility would encompass only the 20-acre parcel, while the corrective action facility would be the entire 100-acre parcel.

The May 18, 1992 Boeing memorandum makes a particular note of the phrase "and narrower" as used in the proposed Subpart S corrective action rule (55 FR No. 145, 30808). This phrase is used to relate the 40 CFR § 260.10 definition of facility to the proposed corrective action definition. Use of this term, however, provides no basis for Boeing to interpret the § 260.10 definition of facility so as to conflict with the interpretation expressed through EPA's written policy and established practice.

Another point of confusion for Boeing appears to center on the applicability of management standards to regulated units, as opposed to other areas associated with waste management. As examples of these other areas, Boeing has cited satellite accumulation areas and process units. For example, 40 CFR § 264.1(g)(3) clearly states that the requirements of 40 CFR Part 264 do not apply to generator activities. Similarly, § 264.1(a) states that Part 264 applies to management of hazardous waste.

This distinction necessarily implies that areas of a facility that are not associated with hazardous waste treatment, storage or disposal are not subject to the technical standards in Part 264. Restated, permit requirements, other than for corrective action, will apply only to regulated units for which a permit is required. Other areas at the facility will be included in the permit only to the extent that these areas are necessarily associated with proper waste management at the regulated unit.

A number of resources are required for proper operation of a regulated unit, but are frequently located separately or away from the unit. These resources include recordkeeping documents, emergency response equipment, spill containment and cleanup equipment, security, communications, etc. Because these resources are necessary for proper waste management, a definition of facility that excludes them is inconsistent with the requirements of Part 264.

There are several consequences of considering waste generation portions of the Renton plant as distinct from units regulated under Part 264 with regard to the definition of facility. If generating activities are considered to be part of a facility distinct from treatment, storage or disposal activities, generating activities at the plant would need to be assigned another identification number. The assignment of multiple EPA/State identification numbers for a single physical plant, however, is precluded by both EPA and Washington state policy. In addition, separate documents for personnel training, preparedness and prevention, contingency plan and emergency

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procedures, and inspections must be maintained. Wastes generated at the plant would be handled as off-site wastes at the storage facility, with manifest and waste acceptance procedures required before acceptance.

Boeing may also wish to refer to permit applications for the Boeing Auburn plant WAD 04133 7130 and the permit subsequently issued to the facility. The permit application for the Auburn facility designates the facility as all contiguous property at the plant, not just the isolated units at which hazardous or dangerous waste is managed. With regard to the Renton application, Boeing has made no demonstration that the Renton plant is materially different from this site, or why the definition of facility should be expected to differ between the two.

Finally, the May 18 Boeing memorandum referenced earlier discusses whether the waste management permitting definition of facility or the corrective action definition applies to 40 CFR Part 264 Subparts AA and BB. The Subpart AA and BB rule clearly states that the definition applicable to these subparts is that in § 260.10 that is applicable to waste management unit permitting (55 FR 25456). Any narrower construction of the applicability of this rule would be inconsistent with §3004(n) of HSWA, which reads:

"* * *promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment."

For example, a process vent from a recycling distillation column seldom would be found within in a tank farm, because the presence of waste management process equipment within a tank farm is inconsistent with proper tank management. Boeing's narrow interpretation of facility would exclude applicability of Subparts AA and BB to such recycling units except in such an unlikely situation. Excluding such process vents is clearly at odds with §3004(n) of HSWA and the intent of the Subparts AA and BB regulations. Comments concerning Subparts AA and BB in the March 12, 1992 letter from Dave Bartus, EPA, to L.M. Babich, Boeing, remain applicable.

To summarize, the definition of facility for base-program permitting purposes encompasses all contiguous property associated with the site. This definition is not limited to only that portion directly associated with waste management activities. This definition is also applicable to regulations in 40 CFR 264 Subparts AA and BB. The corrective action definition of facility expands upon the permitting definition by including

additional contiguous property beyond the site boundary that is
under the control of the facility owner or operator.

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